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**From:**

**Sent:** August 5, 2008

**To:**

**Cc:**

**Subject:** Notice 2004-34

I agree that the transfer fee appears to qualify for deferral under RP 2004-34. Generally, if the taxpayer is deferring for financials, it can defer for tax purposes. One exception is if the taxpayer's obligation "otherwise ends." I think you have a factual issue of whether the transfer fee relates to anything provided in the future [REDACTED]

With regard to the language in section 5.02(1)(b)(i), the taxpayer must know when the advance payment was received and how much was reported in revenues in that year so the taxpayer can report the remaining amount in the next succeeding tax year. Generally, taxpayers track when the advance payment is received, and then can report the amount in income in the following year. However, some taxpayers do not track when the advance payment is received; for example, those taxpayers that for financial purposes just report the advance payment when the good/service is provided and don't otherwise record the receipt of the advance payment. For those taxpayers, there is no way for them to know what year to report the advance payment in taxable income under the RP. In these cases, the taxpayer can still use the RP, but must report the amount earned in year 1 and the remaining amount in year 2 (and can use other methods if they cannot determine the amount earned). I expect that your taxpayer tracks when the payment is received, and would be able to meet the requirement that it can determine the amount reported in revenues in year 1 (even if that amount is 0). The tracking issue usually comes up with taxpayers that have numerous, small amounts of advance payments (e.g., tokens that can be used to play games), but the issue can occur any time a taxpayer does not record the date of sale. See example 7 in the RP, where a taxpayer sells gift cards without an expiration date and does not track the date of receipt of the advance payment (perhaps unrealistic). Compare that example to the taxpayer in example 8, where the taxpayer's gift cards expire after 12 months, meaning that the taxpayer tracks the sale date of the gift cards.

I can't comment on the lack of consent issue without more facts, but if the taxpayer was previously using RP 71-21 to defer, it wouldn't need consent to use RP 2004-34. If the taxpayer had previously reported the advance payment when received, then I think it would have been required to obtain consent (although consent is automatic).

Hope that helps.